

## V. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

1. a) Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.
  - b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.
  - c) Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.
  - d) Contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations.
  - e) Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2. a) Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.

- b) Provide information to workers' representatives which is needed for meaningful negotiations on conditions of employment.
    - c) Provide information to workers and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.
  3. Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.
  4.
    - a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country.
    - b) When multinational enterprises operate in developing countries, where comparable employers may not exist, provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families.
    - c) Take adequate steps to ensure occupational health and safety in their operations.
  5. In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.
  6. In considering changes in their operations which would have major employment effects, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of the workers in their employment and their organisations, and, where appropriate, to the relevant governmental authorities, and co-operate with the worker representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.
  7. In the context of bona fide negotiations with workers' representatives on conditions of employment, or while workers are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer workers from the enterprises'

component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of the workers in their employment to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

## Commentary on Employment and Industrial Relations

47. This chapter opens with a chapeau that includes a reference to “applicable” law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to national and international levels of regulation of employment and industrial relations matters. The terms “prevailing labour relations” and “employment practices” are sufficiently broad to permit a variety of interpretations in light of different national circumstances – for example, different bargaining options provided for workers under national laws and regulations.
48. The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, last revised in 2006 (the ILO MNE Declaration). The ILO MNE Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD *Guidelines* cover all major aspects of corporate behaviour. The OECD *Guidelines* and the ILO MNE Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO MNE Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the ILO MNE Declaration and the *Guidelines* are institutionally separate.
49. The terminology used in Chapter V is consistent with that used in the ILO MNE Declaration. The use of the terms “workers employed by the

multinational enterprise” and “workers in their employment” is intended to have the same meaning as in the ILO MNE Declaration. These terms refer to workers who are “in an employment relationship with the multinational enterprise”. Enterprises wishing to understand the scope of their responsibility under Chapter V will find useful guidance for determining the existence of an employment relationship in the context of the *Guidelines* in the non-exhaustive list of indicators set forth in ILO Recommendation 198 of 2006, paragraphs 13 (a) and (b). In addition, it is recognised that working arrangements change and develop over time and that enterprises are expected to structure their relationships with workers so as to avoid supporting, encouraging or participating in disguised employment practices. A disguised employment relationship occurs when an employer treats an individual as other than an employee in a manner that hides his or her true legal status.

50. These recommendations do not interfere with true civil and commercial relationships, but rather seek to ensure that individuals in an employment relationship have the protection that is due to them in the context of the *Guidelines*. It is recognised that in the absence of an employment relationship, enterprises are nevertheless expected to act in accordance with the risk-based due diligence and supply chain recommendations in paragraphs A.10 to A.13 of Chapter II on General Policies.
51. Paragraph 1 of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO’s 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.
52. Paragraph 1c) recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high-quality, well-paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this

regard, raising the standards of education of children living in host countries is especially noteworthy.

53. Paragraph 1d) recommends that enterprises contribute to the elimination of all forms of forced and compulsory labour, another principle derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. Convention 29 requests that governments “suppress the use of forced or compulsory labour in all its forms within the shortest possible period”, while Convention 105 requests of them to “suppress and not to make use of any form of forced or compulsory labour” for certain enumerated purposes (for example, as a means of political coercion or labour discipline), and “to take effective measures to secure [its] immediate and complete abolition”. At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.
54. The reference to the principle of non-discrimination with respect to employment and occupation in paragraph 1e is considered to apply to such terms and conditions as hiring, job assignment, discharge, pay and benefits, promotion, transfer or relocation, termination, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958, the Maternity Protection Convention 183 of 2000, Employment (Disabled Persons) Convention 159 of 1983, the Older Workers Recommendation 162 of 1980 and the HIV and AIDS at Work Recommendation 200 of 2010, considers that any distinction, exclusion or preference on these grounds is in violation of the Conventions, Recommendations and Codes. The term “other status” for the purposes of the *Guidelines* refers to trade union activity and personal characteristics such as age, disability, pregnancy, marital status, sexual orientation, or HIV status. Consistent with the provisions in paragraph 1e, enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.
55. In paragraph 2c) of this chapter, information provided by companies to their workers and their representatives is expected to provide a “true and fair view” of performance. It relates to the following: the structure of the enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality.

Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

56. The reference to consultative forms of worker participation in paragraph 3 of the Chapter is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the ILO MNE Declaration. Such consultative arrangements should not substitute for workers' right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to working arrangements is also part of paragraph 8.
57. In paragraph 4, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that multinational enterprises are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect workers' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment. The ILO Recommendation No. 194 of 2002 provides an indicative list of occupational diseases as well as codes of practice and guides which can be taken into account by enterprises for implementing this recommendation of the *Guidelines*.
58. The recommendation in paragraph 5 of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph A.4 of the General Policies chapter on encouraging human capital formation. The reference to local workers complements the text encouraging local capacity building in paragraph A.3 of the General Policies chapter. In accordance with the ILO Human Resources Development Recommendation 195 of 2004, enterprises are also encouraged to invest, to the greatest extent practicable, in training and lifelong learning while

ensuring equal opportunities to training for women and other vulnerable groups, such as youth, low-skilled people, people with disabilities, migrants, older workers, and indigenous peoples.

59. Paragraph 6 recommends that enterprises provide reasonable notice to the representatives of workers and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their workers, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.